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13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 CITY OF ORLANDO POLICE PENSION )  
 16 FUND by its Trustees, derivatively on behalf )  
 17 of GOOGLE INC., )

18 Plaintiff,

19 v.

20 LAWRENCE E. PAGE, SERGEY BRIN, )  
 21 ERIC E. SCHMIDT, L. JOHN DOERR, JOHN )  
 22 L. HENNESSY, ANN MATHER, PAUL S. )  
 23 OTELLINI, K. RAM SHRIRAM and )  
 24 SHIRLEY TILGHMAN, )

25 Defendants,

26 and

27 GOOGLE INC., a Delaware corporation,

28 Nominal Defendant.

**ORIGINAL FILED**

MAY - 2 2013

Richard W. Winking  
 Clerk, U.S. District Court  
 Northern District of California  
 San Jose

**CV 13-02038**

**VERIFIED SHAREHOLDER  
 DERIVATIVE COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 The City of Orlando Police Pension Fund (“Orlando Police” or the “Fund”) through its  
2 trustees and by its undersigned counsel, alleges upon personal knowledge as to itself and its own  
3 acts, as well as upon information and belief as to all other matters based upon, *inter alia*, the  
4 investigation made by and through their attorneys, which investigation included, among other  
5 things, a review of documents filed with the U.S. Securities and Exchange Commission (the  
6 “SEC”), communications with counsel for Google Inc. (“Google” or the “Company”), news  
7 releases, media reports and publicly available sources concerning the Company, as follows:

### 8 INTRODUCTION

9 1. Google operates the world’s most popular Internet search service allowing users  
10 to organize the information available on the Worldwide Web and make it more accessible and  
11 useful. Consumers are not charged for use of Google’s Internet search engine. Instead, Google  
12 earns revenues primarily through paid advertising by merchants seeking to sell products to  
13 consumers who are searching for similar items on the Internet.

14 2. Google, like any other person or corporation, is required to comply with the law  
15 in operating its business. Among the laws to which Google’s business operations are subject to  
16 is the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §331(a) and (d), which prohibits the  
17 introduction into interstate commerce of misbranded or unapproved drugs; as well as the  
18 Controlled Substances Act, 21 U.S.C. §952 (collectively the “Drug Marketing Statutes”), which  
19 prohibits the importation of controlled substances into the United States.

20 3. Defendants, despite knowing of, or recklessly disregarding, the legal obligations  
21 imposed by the Drug Marketing Statutes, allowed Google to facilitate the placing of  
22 advertisements by online Canadian pharmaceutical companies soliciting the sale of products in  
23 the United States. This conduct violated the Drug Marketing Statutes.

24 4. On August 24, 2011, the Department of Justice (“DOJ”) announced that Google  
25 had entered into a non-prosecution agreement with the DOJ in which Google agreed to forfeit  
26 \$500 million for improperly facilitating the placement of advertisements from Canadian online  
27 pharmacies. This forfeiture of \$500 million represents one of the largest ever in the United  
28 States.



## INTRADISTRICT ASSIGNMENT

10. A substantial part of the events or omissions which give rise to the claims in this action occurred in Mountain View, a city in the County of Santa Clara, and as such this action is properly assigned to the San Jose Division of this Court.

## PARTIES

### Plaintiff

11. Orlando Police is a public pension fund which has been a shareholder of Google continuously since May 2, 2005. Orlando Police is managed by a board of trustees consisting of Jay L. Smith, Vince B. Montgomery, William Long, Antonio A. Blanca and Laurie J. Botts. Orlando Police's trustees are all citizens of Florida.

### Nominal Defendant

12. Nominal Defendant Google is a Delaware corporation with its principal executive offices located at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google is a citizen of California and Delaware.

### Individual Defendants

13. Defendant Lawrence E. Page ("Larry Page" or "Page"), a co-founder of Google, has been a director since the Company's inception in September 1998 and its Chief Executive Officer ("CEO") since April 4, 2011. Page previously served as Google's President of Products from 2001 to April 3, 2011, CEO from 1998 to 2001 and Chief Financial Officer ("CFO") from 1998 to 2002. The Company's 2012 Proxy Statement filed with the SEC on May 9, 2012 ("2012 Proxy") admits that Page lacks independence in carrying out his responsibilities as a director. Defendant Page was a member of the Company's Executive Management Group ("EMG") at all times relevant hereto. Page, according to the 2012 Proxy, owns 80,000 shares of Class A common stock and 26,138,596 shares of Class B common stock controlling approximately 28.4% of the Company's total voting power. Page is a citizen of California.

14. Defendant Sergey Brin ("Brin"), also a co-founder of Google, has been a director since the Company's inception in September 1998. Brin previously served as Google's President of Technology from 2001 to April 3, 2011 and as its President and Chairman from 1998 to 2001.

1 The Company's 2012 Proxy admits that Brin lacks independence in carrying out his  
2 responsibilities as a director. Defendant Brin was a member of the Company's EMG at all times  
3 relevant hereto. Brin, according to the 2012 Proxy, owns 25,722,844 shares of Class B common  
4 stock controlling approximately 28% of the Company's total voting power. Brin is a citizen of  
5 California.

6 15. Defendant Eric E. Schmidt ("Schmidt") has been a director of Google since 2001  
7 and the Executive Chairman of its Board since April 4, 2011. Schmidt previously served as  
8 Google's CEO from 2001 to 2011 and the Chairman of its Board from 2001 to 2004 and 2007 to  
9 April 2011. The Company's 2012 Proxy admits that Schmidt lacks independence in carrying out  
10 his responsibilities as a director. Defendant Schmidt was a member of the Company's EMG at  
11 all times relevant hereto. Schmidt, according to the 2012 Proxy, owns 132,110 shares of Class A  
12 common stock and 8,729,303 shares of Class B common stock controlling approximately 9.5%  
13 of the Company's total voting power. Together, defendants Page, Brin and Schmidt control  
14 approximately 65.9% of the Company's voting power which combined with their positions as  
15 directors and senior executives gives them complete control over the Company and its affairs.  
16 Schmidt is a citizen of California.

17 16. Defendants Page, Brin and Schmidt are, at times, referred to herein as the "Senior  
18 Executive Defendants."

19 17. Defendants L. John Doerr ("Doerr") has been a director of Google since 1999.  
20 Doerr has been a General Partner of the venture capital firm Kleiner Perkins Caufield & Byers  
21 ("Kleiner Perkins") since 1980. Although Doerr served on Google's Board during the time  
22 which the U.S. government was closely scrutinizing the illegal sale of drugs over the Internet and  
23 the companies which facilitated that trade, Doerr, in breach of his fiduciary duties to Google,  
24 failed to implement a system of internal controls designed to address the issues being confronted  
25 by the Company as a provider of advertising to foreign pharmacies. Doerr is a citizen of  
26 California.

27 18. Defendant John L. Hennessy ("Hennessy") has been a director of Google since  
28 April 2004 (which was a few months before the Company's initial public offering on August 19,

2004) and has served as the Board's "Lead Independent Director" since April 2007. Hennessy has served as the President of Stanford University since September 2000 and is a citizen of California.

19. Defendant Ann Mather ("Mather") has been a director of Google since November 2005. Mather was a member of the Committee constituted in order to consider the Demand and those of certain other Google shareholders made on the Company's Board. Mather is a citizen of California.

20. Defendant Paul S. Otellini ("Otellini") has been a director of Google since April 2004. Otellini has also served as a senior executive for Intel Corporation and is a citizen of California.

21. Defendant K. Ram Shriram ("Shriram") has been a director of Google since 1998. Shriram is a member of the board of trustees of Stanford University and is a citizen of California.

22. Defendant Shirley M. Tilghman ("Tilghman") has been a director of Google since October 2005. Tilghman has served as the President of Princeton University since 2001 and is a citizen of New Jersey.

23. Defendants Page, Brin, Schmidt, Doerr, Hennessy, Mather, Otellini, Shriram and Tilghman are, at times, referred to herein as "Defendants."

## SUBSTANTIVE ALLEGATIONS

### The Company

24. Google is a global technology company whose name in colloquial language has become synonymous with a verb for performing an Internet search. Despite the pervasive nature of Google's web search technologies and its various other businesses, such as its Motorola cellular telephone business, the Company's primary business is, in fact, advertising, which generates the vast majority of Google's revenue (92% of revenue in fiscal year 2012).

25. Google's primary advertising platform is the AdWords product which is an auction based advertising program allowing advertisers to place text-based and display ads on the Company's and its network members' websites. Display advertising is comprised of videos,

1 text, images, and other interactive advertisements that run across the web on computers and  
2 mobile devices, including smart phones and handheld computers such as netbooks and tablets.  
3 Most of Google's customers pay on a cost-per-click basis, which means that an advertiser only  
4 pays Google when a user clicks on an advertisement. The Company also offers advertising on a  
5 cost-per-impression basis that enables advertisers to pay Google based on the number of times  
6 their advertisements display on the Company's and its network members' websites as specified  
7 by the advertisers.

8 26. AdWords is used by all different types of advertisers as dictated by Google and  
9 the policies it adopts in order to regulate the use of the platform. AdWords permits advertisers to  
10 select the geographic regions (*i.e.*, geo-target) where they wish their advertisements to be  
11 displayed. For many years, Google's policies knowingly permitted Canadian online pharmacies  
12 to geo-target consumers in the U.S. promoting the sale of prescription drugs to be shipped into  
13 the U.S. The shipping of drugs from foreign countries into the U.S., however, was directly  
14 contrary to federal law.

15 **U.S. Law Prohibits the Importation of**  
16 **Drugs from Foreign Online Pharmacies**

17 27. Pursuant to the Federal Food, Drug and Cosmetic Act of 1938 (the "Act"), 21  
18 U.S.C. §331(a) and (d), it is illegal for pharmacies located outside of the U.S. to ship prescription  
19 drugs into the U.S. The Act seeks to protect U.S. consumers from drugs that have not been  
20 approved for sale by the U.S. Food and Drug Administration ("FDA") and that were  
21 manufactured outside of the FDA's jurisdiction, which generally requires manufactures to adhere  
22 to Current Good Manufacturing Practices ("cGMP"). Moreover, the FDA seeks to protect  
23 consumers from the practices employed by rogue pharmacies whereby prescription drugs are  
24 shipped solely on the basis of on an online consultation. Defendants were well aware that the  
25 Canadian online pharmacies, which the Company specifically permitted to target advertising to  
26 U.S. consumers, were shipping drugs into the U.S. in violation of federal law.

27 28. The Controlled Substances Act, 21 U.S.C. §801 *et seq.*, which was enacted in  
28 1970, similarly seeks to protect U.S. consumers by regulating the manufacturing, importation



1 and possession of certain controlled substances. Thus, the Controlled Substances Act prohibits  
 2 the importation of controlled substances into the U.S. The Senior Executive Defendants also  
 3 knew that the Canadian online pharmacies importation of controlled substances into the U.S. was  
 4 in violation of federal law.

5 **Defendants Knew That the Shipment of Drugs into the U.S.**  
 6 **by Canadian Online Pharmacies Violated Federal Law**

7 29. In 1999, the National Association of Boards of Pharmacy (the “NABP”), an  
 8 independent professional organization that seeks to support the states respective boards of  
 9 pharmacy in protecting public health, established the Verified Internet Pharmacy Practices Sites  
 10 (“VIPPS”) program for accrediting online pharmacies in compliance with state and federal laws  
 11 and regulations and also NABP’s criteria. The VIPPS accreditation process is a rigorous one  
 12 designed to weed out rogue online pharmacies which care for nothing more than their own  
 13 profits as opposed to patient safety.

14 30. On March 13, 2003, the NABP wrote to Google in response to the Company’s  
 15 inquiry concerning the ability of rogue online pharmacies to advertise their services on Internet  
 16 search engines. The letter to Mary Anne Belliveau, Google’s Vertical Market Manager,  
 17 Healthcare, stated that “the importation of prescription drugs from foreign countries generally  
 18 violates . . . the Federal Food, Drug and Cosmetic Act.” Thus, the NABP urged Google to adopt  
 19 the VIPPS accreditation program in order to protect U.S. consumers from the nefarious practices  
 20 used by the rogue online pharmacies which posed a significant danger to the well-being of U.S.  
 21 consumers.

22 31. The NABP also warned Google that it was “deeply concerned that these rogue  
 23 Internet sites could be a front for criminals seeking to introduce adulterated medications,  
 24 counterfeit drugs, or worse, to the American market.” As reported by *The Wall Street Journal* on  
 25 May 21, 2011 in an article entitled “Google Was Warned of Rogue Drug Ads,” the Company did  
 26 not respond to the NABP’s letter. Nor did Google take any action at the time to stop Canadian  
 27 online pharmacies from targeting advertisements to consumers in the U.S.  
 28



32. An October 31, 2003, article in *The Wall Street Journal* entitled “Drugstore.com Battles Portals With Imported-Drug Ads” reported that Peter J. Pitts, the FDA’s associate commissioner for external relations, stated that the FDA would be “reaching out to the search engines” about “how we can work together to stem the tide of these dangerous drug dealers.” The FDA added that it is almost always illegal for companies to ship drugs from other countries into the U.S. Interviewed for the article, defendant Page was quoted as stating: “It might be easier for us to say we’re not going to accept any pharmacy-related advertising, but that would mean consumers couldn’t easily buy things and save money. As a matter of principle, we want to have free choice for consumers . . . *even if we get some hassles for it.*” (Emphasis added).

33. Unlike Google, the company AOL, another large Internet service provider and a competitor to Google, was taking proactive measures to combat drug advertising from questionable online pharmacies. In fact, AOL had reportedly asked Google to stop delivering any sponsored links to AOL’s search engine from pharmacies that were not certified by state regulators.

34. In November 2003, Overture, a unit of Yahoo! Inc. which provides advertising services similar to those of Google’s AdWords, stopped allowing online pharmacies to buy advertising that appeared when Internet users searched for narcotics and other medications. Overture stated its intention to begin using a third-party to verify whether to sell advertising to legitimate online pharmacies.

35. On December 1, 2003, Google announced that it would stop running ads for foreign pharmacies that were selling prescription medications in violation of U.S. drug laws. The move came shortly after certain other large Internet search companies including Yahoo! and Microsoft Corp. announced that they had begun cracking down on advertising by online sellers of Vicodin, Oxycontin and other controlled substances in response to pressure from the FDA and other groups aimed at deterring web sites from accepting advertising from unlicensed Internet pharmacies. Google announced that it would begin using a third-party to verify that foreign online pharmacies using Google advertising were complying with the U.S. drug laws.

1           36. Google retained Square Trade Inc. (“Square Trade”) between 2004 and 2006, and  
2 then PharmacyChecker.com LLC (“PharmacyChecker”) in 2006, to verify online pharmacies.  
3 However, Google knowingly permitted Square Trade to verify Canadian online pharmacies that  
4 merely self-certified that they were in compliance with applicable U.S. regulations, without any  
5 independent corroboration; and, also knowingly permitted PharmacyChecker to certify Canadian  
6 online pharmacies that sold prescription drugs. Thus, Google knowingly permitted Canadian  
7 online advertisers to use the Company’s AdWords system to target advertisements into the U.S.

8           37. Also on December 1, 2003, *The Washington Post* published an article entitled  
9 “Google to Limit Some Drug Ads; Web Giants Asked to Help Discourage Illicit Online  
10 Pharmacies.” The article explored Google’s decision to work with a third-party (*i.e.*, Square  
11 Trade) to help the Company weed out rogue pharmacies and also discussed the government’s  
12 efforts to dissuade the search engines from doing business with illicit pharmacies and cited three  
13 separate congressional committees looking into the issue. Mr. Pitts from the FDA was quoted as  
14 stating “We’re literally placing calls to search engines trying to get a meeting going.” In  
15 addition, the article disclosed that Google was contacted by the father of a boy who ended up in a  
16 juvenile psychiatric ward as a result of obtaining Vicodin through the use of Google’s search  
17 engine. A spokesperson for the Company stated that Google “takes this very seriously.”

18           38. On July 22, 2004, Sheryl Sandberg, then Google’s Vice President of Global  
19 Online Sales and Operations, testified before Congress concerning Google’s online pharmacy  
20 policies. In a written submission, Sandberg described Square Trade’s verification process  
21 requiring online pharmacies to be licensed. Sandberg omitted from her testimony, however, that  
22 Google permitted Square Trade to verify Canadian online pharmacies, thus allowing them to use  
23 AdWords in the U.S.

24           39. On December 13, 2004, Andrew McLaughlin, Google’s senior policy counsel,  
25 testified before Congress in a hearing entitled “Safety of Imported Pharmaceuticals:  
26 Strengthening Efforts to Combat the Sales of Controlled Substances Over the Internet.” During  
27 that hearing McLaughlin admitted that Google was aware of the illegal nature of selling  
28 controlled substances over the Internet stating that:

We get what a serious problem this is. Google is an Internet company. We see what is going on. ***It is evident to us as much as anybody that there is a serious problem with illegal sales of on-line drugs over the Internet.*** [Emphasis added.]

40. On July 7, 2008, Joseph A. Caliano, Jr. of The National Center on Addiction and Substance Abuse at Columbia University (“CASA”) wrote to defendant Schmidt urging Google to stop promoting rogue online pharmacies that were shipping controlled substances into the U.S. in violation of the law. The letter provided:

Enclosed is a copy of a report to be released July 9<sup>th</sup> by The National Center on Addiction and Substance Abuse (CASA) at Columbia University, “*You’ve Got Drugs!*” V: Prescription Drug Pushers on the Internet, and the accompanying press release. This report documents Web sites advertising and selling controlled prescription drugs like OxyContin and Percocet, Valium and Xanax, and Ritalin and Adderall without legitimate prescriptions. This year, CASA found that 85 percent of Web sites selling these drugs do not require a legitimate prescription, and there are no controls blocking the sale of these drugs.

Prescription drug abuse is a major health problem in the U.S. In 2006, 15.8 million people reported abusing controlled prescription drugs, more than the combined number who report abusing cocaine, hallucinogens, inhalants and heroin. Children are especially at risk; in 2006, 2.2 million teens between the ages of 12 and 17 admitted abusing a prescription drug in the past year.

***Although Google reports using a company called PharmacyChecker to screen out rogue pharmacies, CASA was able to find prominent displays of ads for rogue Internet pharmacies in a Google search for controlled drugs included in our analysis. This suggests that Google is profiting from advertisements for illegal sales of controlled prescription drugs online.***

I am writing to ask you to take effective action in three areas:

1. Block all advertisements for controlled prescription drugs that do not come from licensed and certified online pharmacies;
2. Screen such sites from Internet searches; and
3. Provide warnings that sale and purchase of controlled drugs over the Internet from unlicensed pharmacies and physicians and without valid prescriptions are illegal. [Emphasis added.]

41. On December 23, 2008, the NABP wrote to defendant Schmidt in order to express their concern that Google “sponsored search results (online advertising) for Internet drug outlets that appear to be operating in violation of the law and/or accepted standards of pharmacy practice in the United States.” The letter provided, in relevant part, that:

We understand Google’s stated online policy is to allow sponsored results for internet drug outlets dispensing drugs from outside the United States, including pharmacies that are licensed in Canada. To the best of our knowledge, we understand that *a third-party verification service Google uses to screen prescriptions drug Web sites has certified several pharmacy Web sites that source their prescription drugs from various locations outside of the United States (Canada and elsewhere), which is contrary to US law and puts patient safety at risk, as FDA has stated that it cannot ensure the safety of such prescription drugs.*

To explain our concern in more detail, pharmacies licensed in Canada are required to afford Canadian residents drug safety protection that US pharmacies afford US residents. When Canadian pharmacies dispense drugs to US residents over the Internet, however, they are not required to follow the same rules and regulations – a loophole in Canadian law that is due to the fact that the product’s final destination is outside of Canada. To skirt Canadian regulations further, the prescription drugs are often shipped from third-world countries such as Turkey or India, a practice that would not be considered lawful or safe were the final customer within Canada, or if a US pharmacy were dispensing prescription drugs to a US resident.

On one review by the FDA, 85% of imported drugs intercepted from India, Israel, Costa Rice [sic] and Vanuatu were shipped to fill orders that consumers believed were placed with “Canadian” pharmacies. Some tested as counterfeit. We are concerned that *your sponsorship of these search results, and your third-party verification service’s certification of these Web sites, aids in a business practice that is contrary to US law, unsafe, and deceptive to US patients.* [Emphasis added.]

**Defendants Knew That Google Was Facilitating Canadian Online Pharmacies in Targeting U.S. Consumers With Advertising**

42. Defendants were well aware that between 2003 and 2009 Google was allowing Canadian online pharmacies to target advertising to U.S. consumers, thereby facilitating the importation of controlled substances into the U.S. in violation of federal law. During a Congressional hearing held on September 21, 2011, defendant Schmidt admitted that he knew Google was facilitating such unlawful conduct. Specifically, Senator John Cornyn questioned Defendant Schmidt concerning Google’s conduct, asking: “Well, was it the result of oversight or

1 inadvertence, or were there some employees in the company that were doing this without your  
 2 knowledge . . .” Schmidt answered: “[w]ell, ***certainly not without my knowledge.***” (Emphasis  
 3 added).

4 43. In an effort to provide Defendant Schmidt an opportunity to clarify his admission  
 5 of contemporaneous knowledge concerning Google’s policy allowing Canadian online  
 6 pharmacies to target advertisements to U.S. consumers, Senator Cornyn corresponded with  
 7 Schmidt after the hearing. In response, defendant Schmidt again admitted his knowledge and  
 8 also that of Google’s management stating:

9 ***Sometime around 2004, it was brought to management’s***  
 10 ***attention generally . . .*** I believe I first learned of the issue around  
 11 that time through meetings and internal discussions. The  
 company’s policy did not block licensed Canadian pharmacies . . .  
 to advertise in the United States.

12 \* \* \*

13 As I noted earlier, not blocking Canadian licensed pharmacies  
 14 certified by Square Trade and PharmacyChecker from advertising  
 15 in the United States was the result of a continuing discussion  
 involving a variety of policy and implementation questions over  
 16 several years, and involved many employees in the company  
 beyond the policy team. [Emphasis added.]

17 44. The Company’s management, which included defendants Page and Brin,  
 18 Google’s co-founders and respectively Presidents of Products and Technology during the  
 19 relevant periods, were also well aware that Google permitted Canadian online pharmacies to  
 20 advertise in the U.S. Indeed, Page tauntingly admitted as much in an interview for the October  
 21 31, 2003 *Wall Street Journal* article in which he stated that Google would not seek to limit  
 22 consumer choice in purchasing drugs “***even if we get some hassles for it.***” (Emphasis added).

23 45. In addition, defendants Page, Brin and Schmidt were aware of Google’s policy  
 24 allowing Canadian online pharmacies to target advertising to U.S. consumers because they were  
 25 members of the Company’s EMG [Executive Management Group] at all relevant times hereto.  
 26 Indeed, the Company’s Demand Refusal Letter admits that the issues surrounding Google’s  
 27 online pharmacy advertising policies were, in fact, elevated to the EMG and that the issues were  
 28 debated among the Company’s senior executives. Moreover, the letter confirms that most

1 decisions concerning the Company's online pharmacy policy were made at the senior executive  
2 level.

3 46. Knowledge of Google's misdeeds by the Company's senior management was also  
4 confirmed by Peter Neronha, Esq., U.S. Attorney for the District of Rhode Island (the "U.S.  
5 Attorney"), in an article published in *The Wall Street Journal* on August 27, 2011 entitled "New  
6 Heat for Google CEO --- U.S. Says Google's Larry Page Knew About Improper Online  
7 Pharmacy Ads" which provides, in relevant part, that:

8 Behind Google Inc.'s decision this week to settle a U.S. criminal  
9 probe into ads it carried for unlicensed online pharmacies lies a  
10 previously undisclosed factor: ***Justice Department investigators believed company co-founder Larry Page knew of, and allowed, the ads for years.***

11 ***Sorting through more than four million documents, prosecutors found internal emails and documents that, they say, show Mr. Page was aware of the allegedly illicit ad sales.*** Under this week's  
12 \$500 million settlement, those emails won't be released, avoiding  
13 the possibility of disclosure at trial.

14 ***"Larry Page knew what was going on," Peter Neronha, the Rhode Island U.S. Attorney who led the probe, said in an interview. "We know it from the investigation. We simply know it from the documents we reviewed, witnesses that we interviewed, that Larry Page knew what was going on."***

17 \* \* \*

18 Mr. Neronha didn't say when the Justice Department believes Mr.  
19 Page learned of the matter, though people familiar with the  
20 investigation allege it was several years ago. He declined to  
21 discuss the content of the emails, citing grand jury secrecy.

22 Google declined to discuss whether, or to what extent, Mr. Page or  
23 other top executives knew of, or sanctioned, the ad sales. "This  
24 issue is not related to current advertising practices," a company  
25 spokesman said. "We have settled and we are moving on."

26 Mr. Neronha said he didn't have any plans to prosecute Mr. Page  
27 or individual executives, although he said they weren't off limits.

28 \* \* \*

29 ***"Suffice it to say that this is not two or three rogue employees at the customer service level doing this on their own,"*** Mr. Neronha  
30 said in an interview. ***"This was a corporate decision to engage in this conduct."*** [Emphasis added.]



1           47.     The U.S. Attorney's investigation and subsequent Non-Prosecuting Agreement  
2 ("NPA") entered into with Google on August 19, 2011 revealed that many of Google's  
3 employees were also aware as early as 2003 that Canadian online pharmacies were permitted to  
4 advertise prescription drugs to the Company's users in the U.S. through Google's AdWords  
5 platform. For example, on November 18, 2003, a Company employee sent an email discussing  
6 the advertising budgets of several Canadian online pharmacies and noting that "[a]ll ship for  
7 Canada into the US via Express Mail." An August 23, 2005 email from an employee in  
8 Google's policy group also stated that: "the majority of Canadian Pharmacies are in business to  
9 drive pharmacy traffic from the United States to Canada" and "target the US in their geo-  
10 targeting."

11           48.     Not only did Google know that Canadian pharmacies were using AdWords to  
12 target U.S. consumers, Google, in fact, sought to assist those pharmacies in optimizing their  
13 campaigns with the Square Trade verification procedures in mind. Thus, on or about April 23,  
14 2004, a Google employee based in Canada reported in an email with respect to a large Canadian  
15 pharmacy advertiser that "the Google team is proactively adjusting creative and optimizing with  
16 Square Trade policy in mind." On or about June 4, 2004, the same employee emailed a member  
17 of the Company's policy group stating "the Max team and [customer support] are sort of  
18 furiously working on creative to appease our new policy before approvals gets to them and  
19 disapproves."

20           49.     Where the online pharmacies did not meet Square Trade's or PharmacyChecker's  
21 criteria and, theoretically, could not target advertisements to the U.S., they simply avoided them  
22 by setting their ads to run outside of the U.S. where verification was not required. Those online  
23 pharmacies would subsequently change their geo-targeting to the U.S. market, effectively  
24 skirting verification altogether. Although Google was on notice of these tactics, the Company  
25 did nothing to stop them until it became aware of the DOJ's investigation in 2009.

26           50.     In addition, by 2004 Google was on notice that online pharmacies were  
27 circumventing the Square Trade and PharmacyChecker certification process by intentionally  
28 avoiding the use of certain terms in the text of their AdWords placements, and were instead



1 using those terms as advertising “keywords.” The use of keywords, which are bid on by  
 2 advertisers in order to display their advertisements in response to queries by Google users,  
 3 allowed certain online pharmacies to avoid a manual review by Google, which only selected an  
 4 advertisement for review based on its text and not the associated keywords. Indeed, a February  
 5 13, 2008 email from a member of Google’s policy group confirmed that “[t]he only ads that are  
 6 getting blocked are those with explicit pharma terms in the ad texts; the shady fraudulent  
 7 advertisers know not to do this.” Google only flagged keywords for review after the Company  
 8 became aware of the DOJ’s investigation.

9 51. Google did nothing to block Canadian online pharmacies from targeting  
 10 advertisements to U.S. consumers until it became aware of the DOJ’s investigation in 2009.  
 11 Even then Google failed to take any action for many months. Finally, on February 9, 2010,  
 12 Google announced belated changes to the Company’s Pharmacy Policy in the U.S and Canada  
 13 which went into effect on February 23, 2010, stating as follows:

14 **Only VIPPS and CIPA certified pharmacies will be allowed to**  
 15 **advertise**

16 We’ve made the decision to further restrict the ads we accept for  
 17 online pharmacy sites in the U.S. and Canada. Starting at the end  
 18 of this month, Google AdWords will only accept ads from online  
 19 pharmacies in the U.S. that are accredited by the National  
 20 Association Boards of Pharmacy VIPPS program, and from online  
 21 pharmacies in Canada that are accredited by the Canadian  
 22 International Pharmacy Association (CIPA.)

23 **Pharmacies can only target ads within their country**

24 These pharmacies may only target ads to users in the country in  
 25 which they are accredited. This policy change does not affect our  
 26 online pharmacy policy for countries outside the U.S. and Canada.

27 Accordingly, we’ll no longer be using any 3rd party verifier of  
 28 online pharmacies other than VIPPS and CIPA. AdWords  
 advertisers who aren’t accredited by VIPPS or CIPA will no longer  
 see their online pharmacy ads displayed once this policy change  
 comes into effect[.]

52. On September 21, 2010, many months after the Company became aware of the  
 government’s investigation, Google filed a lawsuit in the Northern District of California seeking  
 to block certain rogue pharmacies from advertising on its search engine and websites.

**The Government Takes Action and Google Forfeits \$500 Million**

53. On May 13, 2010 *The Wall Street Journal* published an article entitled “Google Near Deal In Drug Ad Crackdown” discussing that Google was nearing a settlement of the DOJ’s criminal investigation into allegations that the Company catered to online pharmacies in violation of federal law and provided, in relevant part, that:

The Internet company disclosed in a cryptic regulatory filing earlier this week that it was setting aside \$500 million to potentially resolve a case with the Justice Department.

A payment of that size would be among the highest penalties paid by companies in disputes with the U.S. government.

Google gave few details in its filing about the probe, saying only that it involved “the use of Google advertising by certain advertisers.”

The federal investigation has examined whether Google knowingly accepted ads from online pharmacies, based in Canada and elsewhere, that violated U.S. laws, according to the people familiar with the matter.

\* \* \*

One question under investigation is the extent to which Google knowingly turned a blind eye to the alleged illicit activities of some of its advertisers -- and how much executives knew, the people familiar with the matter said.

54. On August 19, 2011, Google entered into the NPA with the DOJ admitting to the Company’s wrongdoing and stating that:

The Company was on notice that most Canadian online pharmacy advertisers, advertising through the Company’s AdWords program, geo-targeted their advertisements to consumers in the United States and imported into the United States both controlled prescription drugs, in violation of Title 21, United States Code, Section 952, and misbranded and unapproved prescription drugs, in violation of Title 21, United States Code, Section 331(a) and (d). ***The Company acknowledges that it improperly assisted Canadian online pharmacy advertisers to run these advertisements that geo-targeted the United States through AdWords***, and the Company accepts responsibility for the Company’s conduct . . . . [Emphasis added.]

55. The NPA provided that Google would be required to forfeit \$500 million to the U.S. government “as a substitute res for the proceeds of controlled prescription drug sales by Canadian online pharmacy that advertised through the Company’s AdWords program.”

56. In connection with its remediation efforts in the wake of the government's investigation, Google: (a) began requiring VIPPS certification for pharmacy advertisers using AdWords in February 2010; (b) retained an independent company (LegitScript) to supplement its electronic screening of AdWords in order to block non VIPPS approved pharmacies; and (c) forbid Canadian pharmacies from targeting advertisements into the U.S. As part of the NPA, the Company has also agreed to maintain these remedial efforts, to refer pharmacies for prosecution and to report quarterly to the FDA for a period of two years following entry into the NPA.

57. On August 24, 2011, the U.S. Attorney issued a press release announcing the NPA and Google's forfeiture of \$500 million. The press release provides as follows:

**GOOGLE FORFEITS \$500 MILLION GENERATED BY  
ONLINE ADS & PRESCRIPTION DRUG SALES BY  
CANADIAN ONLINE PHARMACIES**

*Internet search engine accepted advertisements from online  
Canadian pharmacies that targeted U.S. consumers and illegally  
imported controlled and non-controlled prescription drugs into  
the United States*

PROVIDENCE, R.I. – Online search engine Google Inc. has agreed to forfeit \$500 million for allowing online Canadian pharmacies to place advertisements through its AdWords program targeting consumers in the United States, resulting in the unlawful importation of controlled and non-controlled prescription drugs into the U.S., announced Deputy Attorney General James M. Cole; Peter F. Neronha, United States Attorney for the District of Rhode Island; and Kathleen Martin-Weis, Acting Director of the U.S. Food and Drug Administration's Office of Criminal Investigations (FDA/OCI). The forfeiture, one of the largest ever in the United States, represents the gross revenue received by Google as a result of Canadian pharmacies advertising through Google's AdWords program, plus gross revenue made by Canadian pharmacies from their sales to U.S. consumers.

The shipment of prescription drugs from pharmacies outside the United States to customers in the U.S. typically violates the Federal Food, Drug and Cosmetic Act and in the case of controlled prescription drugs, the Controlled Substances Act. Google was aware as early as 2003, that generally, it was illegal for pharmacies to ship controlled and non-controlled prescription drugs into the United States from Canada.

The importation of prescription drugs to consumers in the United States is almost always unlawful because the FDA cannot ensure the safety and effectiveness of foreign prescription drugs that are not FDA-approved because the drugs may not meet FDA's labeling requirements; may not have been manufactured, stored,

1 and distributed under proper conditions; and may not have been  
2 dispensed pursuant to a valid prescription. While Canada has its  
3 own regulatory rules for prescription drugs, Canadian pharmacies  
4 that ship prescription drugs to U.S. residents are not subject to  
Canadian regulatory authority, and many sell drugs obtained from  
countries other than Canada which lack adequate pharmacy  
regulations.

5 “The Department of Justice will continue to hold accountable  
6 companies who in their bid for profits violate federal law and put  
7 at risk the health and safety of American consumers,” said Deputy  
8 Attorney General James Cole. “This settlement ensures that  
Google will reform its improper advertising practices with regard  
to these pharmacies while paying one of the largest financial  
forfeiture penalties in history.”

9 “This investigation is about the patently unsafe, unlawful,  
10 importation of prescription drugs by Canadian on-line pharmacies,  
11 with Google’s knowledge and assistance, into the United States,  
12 directly to U.S. consumers,” said Peter F. Neronha, United States  
13 Attorney for the District of Rhode Island. “It is about taking a  
14 significant step forward in limiting the ability of rogue on-line  
pharmacies from reaching U.S. consumers, by compelling Google  
to change its behavior. It is about holding Google responsible for  
its conduct by imposing a \$500 Million forfeiture, the kind of  
forfeiture that will not only get Google’s attention, but the  
attention of all those who contribute to America’s pill problem.”

15 “Today’s agreement demonstrates the commitment of the Food and  
16 Drug Administration to protect the US consumer and hold all  
17 contributing parties accountable for conduct that results in vast  
18 profits at the expense of the public health,” said Kathleen Martin-  
19 Weis, Acting Director of FDA’s Office of Criminal Investigations  
20 (OCI). “The result of this investigation has been a fundamental  
21 transformation of Internet pharmacy advertising practices,  
significantly limiting promotion to US consumers by rogue online  
pharmacies. This accomplishment could not have been possible  
without the resourceful commitment of the Rhode Island United  
States Attorney’s Office, as well as the tireless efforts of our law  
enforcement partners detailed to the OCI Rhode Island Task  
Force.”

22 An investigation by the United States Attorney’s Office in Rhode  
23 Island and the FDA/OCI Rhode Island Task Force revealed that as  
24 early as 2003, Google was on notice that online Canadian  
25 pharmacies were advertising prescription drugs to Google users in  
26 the United States through Google’s AdWords advertising program.  
27 Although Google took steps to block pharmacies in countries other  
28 than Canada from advertising in the U.S. through AdWords, they  
continued to allow Canadian pharmacy advertisers to target  
consumers in the United States. Google was aware that U.S.  
consumers were making online purchases of prescription drugs  
from these Canadian online pharmacies, and that many of the  
pharmacies distributed prescription drugs, including controlled  
prescription drugs, based on an online consultation rather than a

1 valid prescription from a treating medical practitioner. Google was  
2 also on notice that many pharmacies accepting an online  
3 consultation rather than a prescription charged a premium for  
4 doing so because individuals seeking to obtain prescription drugs  
5 without a valid prescription were willing to pay higher prices for  
6 the drugs.

7 Further, from 2003 through 2009, Google provided customer  
8 support to some of these Canadian online pharmacy advertisers to  
9 assist them in placing and optimizing their AdWords  
10 advertisements, and in improving the effectiveness of their  
11 websites.

12 In 2009, after Google became aware of the investigation by the  
13 Rhode Island U.S. Attorney's Office and the FDA/OCI Rhode  
14 Island Task Force of its advertising practices in the online  
15 pharmacy area, and as a result of that investigation, Google took a  
16 number of steps to prevent the unlawful sale of prescription drugs  
17 by online pharmacies to U.S. consumers. Among other things,  
18 Google began requiring online pharmacy advertisers to be certified  
19 by the National Association of Boards of Pharmacy's *Verified  
Internet Pharmacy Practices Sites* program, which conducts site  
20 visits; has a stringent standard against the issuance of prescriptions  
21 based on online consultations; and, most significantly, does not  
22 certify Canadian online pharmacies. In addition, Google retained  
23 an independent company to enhance detection of pharmacy  
24 advertisers exploiting flaws in the Google's screening systems.

25 Under the terms of an Agreement signed by Google and the  
26 Government, Google acknowledges that it improperly assisted  
27 Canadian online pharmacy advertisers to run advertisements that  
28 targeted the United States through AdWords, and the Company  
accepts responsibility for this conduct. In addition to requiring  
Google to forfeit \$500 million, the Agreement also sets forth a  
number of compliance and reporting measures which must be  
taken by Google in order to insure that the conduct described in the  
Agreement does not occur in the future.

The investigation of Google had its origins in a separate,  
multimillion dollar financial fraud investigation unrelated to  
Google, the main target of which fled to Mexico. While a fugitive,  
he began to advertise the unlawful sale of drugs through Google's  
AdWords program. After being apprehended in Mexico and  
returned to the United States by the United States Secret Service,  
he began cooperating with law enforcement and provided  
information about his use of the AdWords program. During the  
ensuing investigation of Google, the government established a  
number of undercover websites for the purpose of advertising the  
unlawful sale of controlled and non-controlled substances through  
Google's AdWords program.

58. An Associated Press article titled "Google Gets a Wake-Up Call on Questionable  
Ads" published on August 24, 2011 discussed the harm to Google's reputation arising out of the



1 wrongful actions and the NPA: “the potential damage to Google’s reputation may be more  
 2 troubling to the company than the amount of money it’s paying to sweep the problem under the  
 3 rug.”

4 59. That same sentiment was echoed by Oppenheimer & Co. analyst Jason Helfstein  
 5 in an August 25, 2011 *Los Angeles Times* article entitled “Google to Pay Penalty for Ads; The  
 6 Firm Agrees to a \$500-million Fine for Running Ads From Canadian Pharmacies” in which the  
 7 analyst reportedly expressed his belief that the fine was the least of Google’s troubles, and “what  
 8 is more distressing to Google is the potential blow to its reputation.”

9 60. On August 25, 2011, *The Wall Street Journal* published an article entitled  
 10 “Repentant Google Settles on Drug Ads” stating, in relevant part, that:

11 In a rare public mea culpa, Google Inc. agreed to pay \$500 million  
 12 to avoid Justice Department prosecution on charges that it  
 13 knowingly accepted illegal advertisements from Canadian online  
 14 pharmacies for years.

15 With the long-awaited settlement Wednesday, the Mountain View,  
 16 Calif., company said it banned advertising of prescription drugs by  
 17 Canadian pharmacies in the U.S. “some time ago.” However, it  
 18 said that ***“it’s obvious with hindsight that we shouldn’t have  
 19 allowed these ads on Google in the first place.”***

20 \* \* \*

21 Google executives testified repeatedly before Congress in the mid-  
 22 2000s that they had rigorous controls in place to prevent  
 23 unlicensed online pharmacies from advertising on Google.

24 But in legal documents released on Wednesday, the government  
 25 painted a starkly different picture, depicting a company that was  
 26 willfully turning a blind eye to such efforts and, at times, even  
 27 assisting them. It cited internal emails from Google employees  
 28 discussing the tactics used by illicit pharmacies to circumvent its  
 controls. Other seemed to suggest in emails that they were actively  
 working with illicit advertisers to prevent their ads from being  
 disqualified.

\* \* \*

Over the years, Google executives repeatedly said that unlicensed  
 pharmacies didn’t advertise on Google. In 2005, Andrew  
 McLaughlin, then a Google executive and later a White House  
 official, told a congressional committee that “Google has  
 implemented a rigorous third-party review and verification process  
 that allows only licensed pharmacies and pharmacists to display  
 advertisements in the United States.”

1 He echoed earlier congressional testimony in 2004 by another  
2 then-Google executive, Sheryl Sandberg. [Emphasis added.]

3 61. In addition to the significant harm caused to the Company's reputation and the  
4 \$500 million fine, Google has suffered damages arising out of the costs required to defend itself  
5 against the government's investigation and the excessive compensation paid to the Senior  
6 Executive Defendants who were breaching the fiduciary duties to the Company.

7 **DERIVATIVE AND DEMAND ALLEGATIONS**

8 62. Plaintiff brings this shareholder derivative action on behalf of Google to redress  
9 injuries suffered, and to be suffered by the Company. Plaintiff will adequately and fairly  
10 represent the interests of Google in enforcing and prosecuting its rights. This action is not a  
11 collusive one to confer jurisdiction that the Court would otherwise lack.

12 63. Plaintiff made a demand on the Board to take steps to investigate and hold the  
13 senior executives and directors responsible for Google's violations of the Drug Marketing  
14 Statutes accountable for their conduct by taking appropriate action to obtain a recovery for the  
15 Company and having the Board take additional steps to prevent the recurrence of similar  
16 wrongdoing in the future.

17 64. On April 11, 2012 the Board constituted the Committee consisting of director  
18 Diane B. Greene ("Greene") and defendant Mather to investigate the matter, but retained  
19 ultimate authority over any decision to be made with respect to those claims.

20 65. Collins Seitz, Jr., of the law firm Seitz Ross Aronson & Moritz LLP ("Seitz  
21 Ross"), counsel for the Committee, wrote a letter (a copy of which is attached hereto as Exhibit  
22 1) to Plaintiff's counsel, and other law firms who had made demand on behalf of their clients,  
23 refusing the demands in their entirety (*i.e.*, the Demand Refusal Letter or the "DRL") which  
24 referred generally to the 149-page Committee Report, a copy of which was not made public.  
25 Since that time, the Board has acted consistently with the position articulated in the Demand  
26 Refused Letter and has failed to take the steps requested in the demand letter.

27 66. The Demand Refused Letter failed to provide a proper foundation for refusing the  
28 Demand for at least the following reasons:



1 (A) The decision to refuse the Demand was made by the Board, rather than the  
2 Committee, and the DRL failed to assess the independence of the Board  
3 members. In fact, a majority of the Board is not independent. The Board  
4 is comprised of the following ten (10) directors: Page, Brin, Schmidt,  
5 Doerr, Greene, Hennessy, Mather, Otellini, Shriram, and Tilghman.  
6 Although the Demand Refused Letter acknowledges that defendants Page,  
7 Brin and Schmidt are not independent because of their status as senior  
8 executives of the Company, the DRL incorrectly concludes that a majority  
9 of the Board, *i.e.*, at least six of its members are independent. That is not  
10 correct since at least the following eight Board members are, in fact,  
11 neither disinterested nor independent:

12 (I) Defendants Page, Brin and Schmidt participated in the wrongful  
13 conduct alleged herein as senior executives of Google and as  
14 members of the EMG which, as discussed above (§§42-50), the  
15 defendants themselves and the Company admit that they were  
16 actively involved in the decision to allow Canadian online  
17 pharmacies to use the Company's AdWords platform to target  
18 advertising to U.S. consumers. Accordingly, defendants Page,  
19 Brin and Schmidt face a substantial threat of liability for those  
20 actions and were not disinterested for purposes of considering the  
21 Demand. In addition, defendants Page, Brin and Schmidt lack  
22 independence as directors as a result of their senior executive  
23 positions with the Company and their long history of working  
24 together as senior executives at Google and, therefore, would be  
25 unwilling to bring suit against each other. Indeed, Schmidt has  
26 described Page and Brin as his "best friends" and Page and Brin  
27 have been working closely together since founding Google out of  
28 their college dorm rooms at Stanford. Moreover, Schmidt would

1 not risk his position at Google and his control over the Company  
2 through his 9.5% voting share along with that of Page's and Brin's  
3 52.4% voting control by agreeing to bring suit against either of the  
4 co-founders. Schmidt also receives payments from Google for two  
5 aeroplanes in which he has a financial stake. In fiscal year 2011  
6 alone, Google paid Schmidt \$380,000 for the Company's use of  
7 those aircraft.

8 (II) Defendant Hennessy is the President of Stanford University and  
9 defendant Shriram serves on the University's board of trustees.  
10 Both defendants Page and Brin are Stanford alumni. Since 2006,  
11 Google, at the direction of defendants Page, Brin and Schmidt,  
12 has donated approximately \$14.7 million dollars to Stanford  
13 University. As the President and a trustee of Stanford whose  
14 duties include raising money for the University, defendants  
15 Hennessy and Shriram would not risk voting to proceed with the  
16 Demand for fear of losing Google's substantial donations to  
17 Stanford and potentially jeopardizing their positions at the  
18 University.

19 (III) Defendant Tilghman is the President of Princeton University.  
20 Defendant Schmidt, a Princeton alumnus, has donated tens of  
21 millions of dollars to Princeton University. For example, on  
22 October 13, 2009, Princeton announced that Schmidt and his wife  
23 Wendy had created a \$25 million endowment fund at Princeton.  
24 Defendant Tilghman was quoted in the press release at stating:  
25 "We are deeply grateful to Eric and Wendy not only for providing  
26 this support, but for providing the capacity and flexibility to make  
27 investments that are likely to have the broadest and most  
28 transformative impact." Defendant Schmidt was also a trustee of

1 Princeton between 2004 to 2008, during which time he exercised  
2 substantial control over the compensation and employment of  
3 defendant Tilghman as the University's President. Accordingly,  
4 for reasons similar to those of defendants Hennessy and Shriram,  
5 defendant Tilghman was unable to independently consider the  
6 Demand.

7 (IV) Defendant Doerr is a general partner at the venture capital firm  
8 Kleiner Perkins. Doerr has solicited and obtained substantial  
9 investments from Google, at the direction of defendants Page, Brin  
10 and Schmidt, for companies in which Kleiner Perkins' funds  
11 possess a financial interest. Doerr is a managing director for the  
12 related Kleiner Perkins' funds. For example, in 2007 Google  
13 purchased Peakstream, Inc. for \$20.3 million and Kleiner Perkins  
14 received 24.5% of that amount (approximately \$5 million).  
15 Among the many other investments Google has made with Kleiner  
16 Perkin's affiliates, as disclosed in the Company's 2012 Proxy, in  
17 August 2011, Google committed to invest up to \$75 million in a  
18 Kleiner Perkin fund for which Doerr is a managing director.  
19 Accordingly, Doerr was unable to independently consider the  
20 Demand.

21 (V) Greene, who became a member of the Board effective on January  
22 12, 2012, was granted \$1 million in Google Stock Units (which  
23 entitle the holder to Class A common stock) on February 1, 2012  
24 which vest over the course of four years provided Greene remains  
25 as a member of the Board during that time. Accordingly, Greene  
26 had a financial incentive to not recommend that litigation be  
27 brought against the Senior Executive Defendants considering their  
28 control over Google and their ability to remove her from the

1 Board. Thus, Greene was unable to serve as an independent  
2 member of the Committee and as a Board member was unable to  
3 independently consider the Demand.

4 (B) The DRL fails to assess the independence of the Committee.

5 (C) The DRL limits its analysis of the independence issue to a conclusion that  
6 Seitz Ross, the Committee's counsel, is independent because it has "never  
7 previously represented Google or Google's Board." This analysis is  
8 flawed for at least the following reasons:

9 (I) It fails to analyze or discuss whether Seitz Ross has ever  
10 represented any of the Board members in their individual capacity,  
11 which is the capacity in which they would be named as defendants  
12 in any action or lack independence to properly pursue the claims  
13 asserted herein.

14 (II) It fails to analyze or discuss whether Seitz Ross has ever  
15 represented any other entity in which any of the Board members  
16 are control persons.

17 (III) It pivots independence on a lack of past representations of Google  
18 while the pertinent issue is whether Seitz Ross will be precluded  
19 from accepting any *future* engagements from Google and, if so, for  
20 what period of time.

21 (IV) It is the independence of the Board rather than the independence of  
22 its counsel which is critical to analyzing the independence issue  
23 especially where, as here, Seitz Ross was not responsible for the  
24 investigation but merely assisted the Board acting through the  
25 Committee in conducting the investigation. Indeed, according to  
26 the DRL, it was only after the Committee determined that the  
27 Demand should be refused that Seitz Ross was asked to draft the  
28 Report.

1 (D) The DRL's conclusion that the Committee "found no wrongdoing or  
2 culpability by Google's directors or officers in connection with Google's  
3 acceptance of Canadian online pharmacy advertising" is directly contrary  
4 to the statement by U.S. Attorney Peter Nerohna (§46, *supra*) and from  
5 Congressional testimony (§§38-39 and 42-43) reflecting the conscious  
6 disregard of known facts and direct participation of Google executives in  
7 facilitating the illegal sale of Canadian pharmaceutical products in the  
8 United States. The DRL does not explain why the statement of Peter  
9 Nerohna was incorrect and he does not appear among the list of persons  
10 interviewed by the Committee.

11 (E) The DRL's conclusion that Google's senior management "acted in good  
12 faith" fails to explain what standard or definition it uses for the term "good  
13 faith." Later in the same paragraph, the DRL seems to equate "good faith"  
14 with "what they considered to be in the best interests of the Company."  
15 However, as a matter of public policy and Delaware law, engaging in  
16 illegal conduct can never be considered something which is in the best  
17 interests of an enterprise. Instead, the term "good faith" has a specific  
18 meaning under Delaware law and senior executives (and directors) whose  
19 conduct is either grossly negligent or consciously disregards known risks  
20 can not be considered good faith.

21 (F) The DRL references legal advice purportedly sought in connection with  
22 the wrongful conduct but does not explain from whom that advice was  
23 sought or what advice was given.

24 (G) The DRL fails to explain why the online pharmacy issue failed to reach  
25 the Board level until after Google learned of the government investigation  
26 or how the failure to reach the Board level until that time was consistent  
27 with the Board's responsibility to oversee the Company's operations.  
28

- 1 (H) The DRL's consideration of the extensive remedial action engaged in by  
2 the Company *after* the DOJ investigation and the NPA ignored the  
3 importance of the Board and senior management needing to be proactive  
4 in preventing Google from engaging in unlawful conduct rather than  
5 simply reacting to government investigations.
- 6 (I) The Report failed to consider whether insurance coverage would be  
7 available to compensate the Company in the event a Google shareholder,  
8 *i.e.*, Plaintiff, rather than the Company itself, brought the underlying  
9 action.
- 10 (J) The DRL failed to quantify the amount of time and resources necessary to  
11 bring the claims which are the subject of the Demand.
- 12 (K) The DRL speculatively claims that litigation would harm Google  
13 employee morale while failing to take into account the benefits of the  
14 likely reforms and cash recovery that would benefit the Company through  
15 the prosecution of derivative claims.
- 16 (L) The DRL fails to state whether the twelve (12) Google employees  
17 interviewed by the Committee represents the universe of Google  
18 employees having knowledge of the wrongdoings at issue in the NPA and  
19 this action or how those individuals compare with the universe of people  
20 interviewed by the DOJ in connection with its investigation.
- 21 (M) The DRL indicates that none of Google's outside contractors or service  
22 providers were interviewed in connection with the Committee's work.
- 23 (N) The Committee's failure to make the Committee Report public standing  
24 alone demonstrates that the underlying investigation reflected in the  
25 Committee Report was not the product of good faith and due care and did  
26 not reach a reasonable result.

27 67. Defendants as directors of Google knew or were at the very least on notice of the  
28 controversy surrounding the illegal sale of drugs online as a result of the numerous press articles

1 written in publications such as *The Wall Street Journal*, the three separate Congressional  
2 committee investigations at which Google provided testimony on the subject and the FDA's and  
3 other government agencies' efforts to dissuade the large search engine from providing  
4 advertising for rogue pharmacies. Notwithstanding the obvious risks posed to Google and its  
5 shareholders as a result of the Company providing advertising for foreign online pharmacies and  
6 the intense scrutiny of the issue in both the press and by the U.S. government, Defendants failed  
7 to implement a system of controls designed to monitor and/or mitigate those risks. Although the  
8 Company retained Square Trade and Pharmacy Checker to verify online pharmacy there was no  
9 Board oversight as to whether those programs were, in fact, effective. Indeed, the Company's  
10 Demand Refusal Letter admits that the Board did not consider the online pharmacy issues until  
11 they were brought to the Board's attention after the Company became aware of the government's  
12 investigation. Accordingly, Defendants are substantially liable as a result of their failure to  
13 perform their oversight duties as directors of the Company, for failing to insure the Company's  
14 compliance with the Drug Marketing Statutes and also for failing to ensure that a reasonable  
15 information and reporting system existed in order to elevate material issues to the Board.

16 68. Google's Board was unable to make an impartial decision as to whether to  
17 institute legal proceedings to redress the wrongdoing alleged herein because a majority of its  
18 members (1) face a substantial likelihood of liability for non-exculpated breaches of their  
19 fiduciary duties to the Company by their participation or acquiescence in the wrongdoing alleged  
20 herein and/or their complete failure to perform their oversight duties to the Company, failure to  
21 oversee the Company's compliance with the Drug Marketing Statutes and systemic failure to  
22 assure that a reasonable information and reporting system existed, and/or (2) are not independent  
23 from the Senior Executive Defendants who otherwise face a substantial likelihood of liability for  
24 their roles in causing the Company to advertise for Canadian online pharmacies.



**CLAIM FOR RELIEF**  
**Breach of Fiduciary Duty**

69. Plaintiff repeats and realleges each and every allegation made above as if fully set forth herein.

70. Defendants owed Google and its shareholders fiduciary duties of loyalty (including duties of candor and good faith) and care. Pursuant to those duties to Google and its shareholders, Defendants were required to ensure that Google complied with all federal laws relating to the importation of drugs into the U.S. and were required to maintain controls and policies to assure Google complied with those laws.

71. The Senior Executive Defendants, however, breached their duty of loyalty by consciously failing to stop the Company from engaging in the unlawful conduct described herein and for affirmatively permitting Canadian online pharmacies to use AdWords to advertise in the U.S.

72. Defendants as directors of Google, breached their fiduciary duty of care in failing to perform their oversight duties as directors of the Company, for failing to insure the Company's compliance with the Statute and also for failing to ensure that a reasonable information and reporting system existed in order to elevate material issues to the Board.

73. As a result of Defendants' breaches of their fiduciary duties, Google has suffered significant harm and is entitled to damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment as follows:

A. Declaring that the Plaintiff may maintain this action on behalf of Google and that Plaintiff is an adequate representative;

B. Declaring that Defendants have breached, participated and/or aided and abetted the breach of their fiduciary duties to Google;

C. Entering judgment against Defendants and directing Defendants to account to Google for all damages, and any interest thereon, sustained by the Company by reason of the wrongdoing alleged herein;

D. Directing Google to take all necessary steps to reform and improve its corporate governance and internal procedures to comply with applicable law and to protect the Company and its shareholders from a repeat of the wrongful conduct alleged herein;

E. Ordering Defendants to reimburse the Company for all compensation they received as a result of the wrongful conduct alleged herein;

F. Awarding Plaintiff the costs and disbursements of this action, together with reasonable attorneys' fees and the reimbursement of expenses; and

G. Granting such other further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues.

Dated: May 2, 2013

**ABRAHAM, FRUCHTER & TWERSKY, LLP**

By:  \_\_\_\_\_

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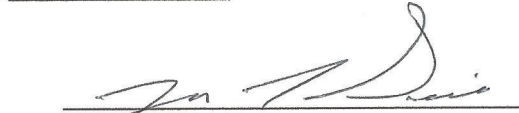
*Counsel for Plaintiff*

**VERIFICATION**

Jay L. Smith, Chairman of the Board of Trustees of the City of Orlando Police Pension Fund (the "Orlando Police Fund"), with authority to act on the Orlando Police Fund's behalf, hereby affirms that I have read the Verified Shareholder Derivative Complaint (the "Complaint") in this action. The matters alleged in the Complaint are true insofar as they concern the Orlando Police Fund. Upon information and belief, the matters alleged in the Complaint are true insofar as they relate to the acts and deeds of other persons.

I verify under penalty of perjury that the foregoing is true and correct.

Executed this 26 day of April, 2013, at Orlando, Florida

  
\_\_\_\_\_  
Jay Smith

# EXHIBIT 1

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January 28, 2013

**BY EMAIL AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

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& Twersky, LLP  
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***Re: Google Inc. Stockholder Demands***

Dear Counsel:

I write on behalf of the Board of Directors (the "Board") of Google Inc. ("Google" or the "Company") in response to purported stockholder demands submitted by Judy Wang by letter dated September 8, 2011; City of Orlando Firefighters' Pension Fund by letter dated January 13, 2012; DeKalb County Pension Fund by letter dated September 25, 2012; and Ira Szmerkes,

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LAMPERS and the Pompano Beach Police & Firefighters' Retirement System by letter dated October 16, 2012 (collectively, the "Demands"). The Demands relate to Google's acceptance of advertising by Canadian online pharmacies targeting and advertising drugs to Google users in the United States through Google's AdWords advertising program and August 2011 entry into a non-prosecution agreement with the United States government (the "NPA"), including Google's agreement to a \$500 million forfeiture. The Demands request that Google's Board investigate the allegations made in the Demands; if warranted, institute litigation against management or other persons responsible to obtain a recovery for the Company; seek contribution or indemnification from Mr. Page and others; and take certain remedial measures to prevent a recurrence of the alleged wrongdoing identified in the Demands.

The Board has determined to refuse the Demands in their entirety.

#### Google's Board and the Special Committee

The Board is comprised of the following ten directors: Larry Page, Sergey Brin, Eric E. Schmidt, L. John Doerr, Diane B. Greene, John L. Hennessy, Ann Mather, Paul S. Otellini, K. Ram Shriram, and Shirley M. Tilghman. Other than Messrs. Page (Google's Chief Executive Officer and a Google co-founder), Brin (Google co-founder and head of special projects), and Schmidt (Executive Chairman of Google), the seven remaining directors are outside, non-management, non-employee directors.

On April 11, 2012, the Board adopted a resolution creating a special committee (the "Committee") comprised of two independent, outside directors: Diane B. Greene and Ann Mather. The Board asked the Committee to consider the facts and circumstances surrounding one of the demands and to recommend to the Board whether or not the actions demanded are in the best interests of Google and its stockholders. On October 24, 2012, the Board asked the

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Committee to consider the facts and circumstances surrounding additional related demand letters, and to recommend to the Board whether the actions demanded in all such letters are in the best interests of Google and its stockholders.

#### The Committee's Investigation

The Committee retained Seitz Ross Aronstam & Moritz LLP ("Seitz Ross") to serve as counsel to the Committee. Seitz Ross has never previously represented Google or Google's Board. With the assistance of counsel from Seitz Ross, the Committee undertook a seven-month investigation into the allegations of the Demands. The investigation included extensive document review and interviews of 17 individuals, including current and former Google employees, in-house counsel, outside counsel, and one third-party pharmacy monitoring service. A chart listing the interviews conducted is attached as Exhibit A hereto.

Following earlier meetings of the Committee on May 24, 2012, June 26, 2012, September 11, 2012, October 17, 2012, and October 23, 2012, the Committee met telephonically on November 8, 2012 to discuss the investigation. The Committee discussed in detail the strengths and weaknesses of the potential claims that Google might bring against its directors and officers and third parties given the facts uncovered during the investigation and the likelihood of achieving a significant recovery for the Company. After discussion, the Committee determined to recommend to the Board that the Demands be refused and that the Company not bring any claims in response to the Demands because doing so would not be in the best interest of Google and its stockholders. The Committee requested that Seitz Ross prepare a draft report for review.

On December 12, 2012, the Committee met telephonically and by GoToMeeting conference. Seitz Ross and the Committee members first reviewed in detail one additional interview that had been completed since the last meeting, which had been rescheduled due to the



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effects of Hurricane Sandy, including their collective view that the additional interview confirmed and reinforced the facts that the Committee had learned in previous interviews, and did not change the Committee's recommendation. The Committee and Seitz Ross then discussed the draft report setting forth the Committee's findings, which Seitz Ross had circulated to the Committee members in advance of the meeting.

On December 14, 2012, the Committee finalized and approved its 149-page report containing the Committee's findings and recommendation to the Board regarding the Demands. The Committee's report was transmitted to the Board.

The Committee's Report and Recommendation

As detailed in the report, the Committee found no wrongdoing or culpability by Google directors or officers in connection with Google's acceptance of Canadian online pharmacy advertising, and no evidence that Google senior management had any conflict of interest or stood to benefit personally from Google's decisions regarding online pharmacy policy. The Committee found that Google senior management involved with Google's online pharmacy policy decisions acted in good faith and followed a robust process that included consultations with inside and outside counsel and elevation of key issues to the Executive Management Group level. While there was at times a vigorous internal debate at Google regarding online pharmacy policy, the Committee concluded that this internal debate reflected good-faith differences of opinion among senior executives who were all acting in what they considered to be the best interests of the Company.

Even though most of the online pharmacy policy decisions at issue were made at the senior executive level and did not reach the Board, the Committee found that this did not reflect a failure of controls or Board disablement from oversight. The Company was expanding rapidly

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at the time and senior management sought and received legal advice. And when online pharmacy issues did reach the Board level soon after Google learned of the government investigation, Google approached the matter seriously, undertaking extensive remedial action in the wake of the DOJ investigation and the NPA, including (1) changing AdWords policy such that it now forbids accepting advertisements from Canadian online pharmacies to run in the United States; (2) requiring third-party pharmacy verification by the Verified Internet Pharmacy Practice Sites (VIPPS) program; (3) adopting back-end monitoring by LegitScript; (4) continuing to invest in enhancing the Company's technical tools for enforcing policy compliance; (5) terminating or taking other disciplinary action against certain Google employees; (6) bringing litigation against certain online pharmacies for violating Google policy; (7) undertaking to maintain and update Company compliance programs and policies; (8) cooperating with the Federal Food and Drug Administration ("FDA"), including sending the FDA quarterly reports that include referral of questionable online pharmacy ads for further investigation; (9) removing ad approval decisions from the sales team; (10) creating a "Red Alert" team to respond to potential policy problems as they emerge; and (11) enhancing sales employee training regarding potential liability.

The Committee also considered potential claims against third parties, including Canadian online pharmacies, Google's third-party verifiers, and attorneys from whom Google received legal advice. Such claims would include causes of action for breach of contract, contribution, and professional malpractice.

The Committee also considered, among other things: (1) the likelihood that pursuing the litigation demanded would involve a substantial commitment of Company time and resources; (2) the risk that litigation against the Company's founders and current or former directors or

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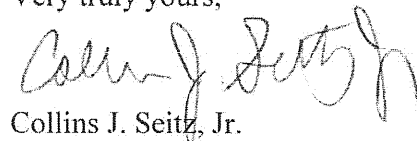
officers could cause distraction or impair morale at a time when the Company is enjoying economic success; and (3) the size of the \$500 million forfeiture and the potential disruption from bringing suit viewed in the context of Google's scope as a business that generated revenues in excess of \$37 billion in 2011.

The Committee concluded that pursuing the claims raised in the Demands would not be in the best interests of Google and its stockholders. The Committee recognized that Google's online pharmacy policy decisions resulted in the NPA and the associated \$500 million forfeiture. After investigation, the Committee determined that the Company had appropriately responded to this experience, including through disciplinary action against certain employees and significant enhancements to the Company's online pharmacy policy and compliance programs. As a result of these and other changes that the Company implemented, the Committee concluded that Google faces much less risk today in the online pharmacy area as a result and therefore recommended that the Board conclude that no further remedial actions are required at this time.

The Board's January 23, 2013 Meeting

The Board considered the Special Committee's recommendation at its January 23, 2013 Board meeting. Consideration of the Committee's recommendation occurred in executive session, without Messrs. Page, Brin or Schmidt attending. After discussion, the participating directors voted unanimously to refuse the Demands in their entirety.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Collins J. Seitz, Jr.", written in a cursive style.

Collins J. Seitz, Jr.

**EXHIBIT A****List of Interviews Conducted**

1	Mary Ann Belliveau	Former Vertical Market Manager, Healthcare
2	Sergey Brin	Google co-founder; head of special projects
3	John Horton	President of LegitScript
4	Alana Karen	Policy Manager
5	Alexander MacGillivray	Former Deputy General Counsel for Products and IP
6	Anthony Maroon	Former Account Manager, Healthcare Vertical
7	Larry Page	Chief Executive Officer; Google co-founder
8	Rowena Paz	Customer Service Representative
9	Kulpreet Rana	Former Google Director of Legal Affairs and Director of Intellectual Property Affairs; Google's first in-house lawyer
10	Records Custodian (Rebecca Engrav and Pravin Rao)	Perkins Coie attorneys
11	Sheryl Sandberg	Former Vice President of Global Online Sales & Operations
12	Eric Schmidt	Executive Chairman
13	Kent Walker, Adam Barea, Lisa Lee, and Julie Hanningan	Senior Vice President and General Counsel, Senior Litigation Counsel, Director of Internal Audit, member of Products and Agreements Legal Team, respectively